

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN CLERKS OFFICE  
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U.S. DISTRICT COURT  
DISTRICT OF MASS.

UNITED STATES OF AMERICA,

Petitioner,

v.

ANDREW M. SWARM,  
(Reg. No. 10149-052),

Respondent.

Misc. Action No.

07 MBD 10039

**NOTICE OF CERTIFICATION THAT RESPONDENT  
IS A SEXUALLY DANGEROUS PERSON AND  
REQUEST FOR HEARING PURSUANT TO 18 U.S.C. § 4248(a)**

The United States of America, by its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, hereby provides notice to this Court that the defendant, Andrew M. Swarm, Reg. No. 06705-033, has been certified to be a "sexually dangerous person" pursuant to section 302(4) of the Adam Walsh Child Protection and Safety Act, Pub. L. No. 109-248, Title III, § 302(4), 120 Stat. 620 (July 27, 2006), codified at 18 U.S.C. § 4248(a), and moves this Honorable Court for a hearing to determine whether defendant Andrew M. Swarm is a "sexually dangerous person" subject to civil commitment for treatment in an appropriate facility pursuant to 18 U.S.C. § 4248. In further support thereof, the United States says as follows:

1. Section 302(4) of the Adam Walsh Child Protection and Safety Act provides, as relevant here:

In relation to a person who is in custody of the Bureau of Prisons \* \* \* any individual authorized by the Attorney General or the Director of the Bureau of Prisons may certify that the person is a sexually dangerous person, and transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall

send a copy of the certificate to the person, and to the attorney for the Government.  
\* \* \* The court shall order a hearing [to be conducted pursuant to the provisions of section 4247(d)] to determine whether the person is a sexually dangerous person. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

18 U.S.C. § 4248(a). The term “sexually dangerous person” is defined in 18 U.S.C. § 4247(a)(5) to mean “a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others.” The term “sexually dangerous to others” is defined in 18 U.S.C. § 4247(a)(6) to mean, with respect to a person, “that the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.”

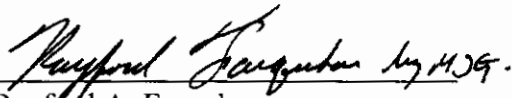
2. Attached hereto as Exhibit 1 is a “Certification of a Sexually Dangerous Person” executed by Paul Sahwell, Interim Chairperson of the Bureau of Prisons’ Certification Review Panel. Attached hereto as Exhibit 2 is a copy of a memorandum from Harley G. Lappin, Director of the Bureau of Prisons, delegating to, among others, Paul Sahwell, Interim Chairperson of the Bureau of Prisons’ Certification Review Panel, the authority to certify offenders as sexually dangerous persons pursuant to 18 U.S.C. § 4248(a). These documents establish that (1) the respondent, Andrew M. Swarm, is presently in Bureau custody at the Federal Medical Center, Devens, Massachusetts; and (2) that an individual, Paul Sahwell, who has received the required delegation of authority from the Director of the Bureau of Prisons, has certified that respondent Andrew M. Swarm is a “sexually dangerous person” as defined by 18 U.S.C. § 4247(a)(5) and “sexually dangerous to others” as defined by 18 U.S.C. § 4247(a)(6).

WHEREFORE, the United States of America hereby requests that this Honorable Court set a time and date to conduct a hearing required by 18 U.S.C. § 4248(a) to determine whether

respondent is a sexually dangerous person subject to commitment to the custody of the Attorney General for treatment in a suitable facility in accordance with 18 U.S.C. § 4248(d). Pursuant to 18 U.S.C. § 4248(a), as the result of the filing of the certification attached to this petition as Exhibit 1, respondent Andrew M. Swarm will remain in custody pending completion of the procedures set forth in 18 U.S.C. § 4248.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By:   
Rayford A. Farquhar  
Assistant U.S. Attorney  
John Joseph Moakley U.S. Courthouse  
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(617) 748-31--

Dated: February 20, 2007

**CERTIFICATION OF A SEXUALLY DANGEROUS PERSON**

(1) I, Paul Sahwell, am Interim Chairperson of the Federal Bureau of Prisons (Bureau) Certification Review Panel, Washington, D.C. Pursuant to 28 C.F.R. § 0.97, the Director of the Bureau has delegated to me the authority to certify persons in Bureau custody as sexually dangerous, as authorized by 18 U.S.C. § 4248(a).

(2) Bureau records reflect the following. Inmate Andrew M. Swarm, Register Number 10149-052, is in Bureau custody at the Federal Medical Center in Ayer (Devens), Massachusetts, in service of a four-month federal term of imprisonment following his revocation of supervised release. Inmate Swarm's original sentence was a 74-month federal term of imprisonment following his convictions for receipt and possession of child pornography in violation of 18 U.S.C. § 2252, and manufacturing marijuana in violation of 18 U.S.C. § 841, Criminal Case No. 00-CR-0566, N.D.N.Y. Inmate Swarm's projected release date is February 21, 2007, via full term release.

(3) Based on a review of inmate Swarm's Bureau records, I certify he is a sexually dangerous person as defined by 18 U.S.C. § 4247(a)(5), and sexually dangerous to others as defined by 18 U.S.C. § 4247(a)(6). My certification is based on information found in Bureau records which includes, but is not limited to, the following:


(a) Inmate Swarm previously engaged or attempted to engage in sexually violent conduct or child molestation as evidenced by having been previously convicted of attempted

sexual abuse and second degree attempted endangering the welfare of a child in a New York State court. The offense conduct in that case involved attempted sexual contact with an 11 year old girl;

(b) A limited psychological review of inmate Swarm indicated an Axis I diagnosis of Pedophilia, Sexually Attracted to Females; and

(c) An initial assessment of inmate Swarm using two actuarial risk assessment instruments (Static-99 and Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR)) was conducted. These results, in addition to inmate Swarm's previous offense conduct, psychological diagnosis, and history of failing to comply with requirements of conditional release, indicate he will have serious difficulty refraining from sexually violent conduct or child molestation if released.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.



Paul Sahwell  
Interim Chairperson  
Certification Review Panel  
Federal Bureau of Prisons

2-20-07  
Date

U.S. Department of Justice

Office of General Counsel

January 22, 2007

MEMORANDUM FOR KATHLEEN M. KENNEY, ASSISTANT DIRECTOR  
OFFICE OF GENERAL COUNSEL

JOHN M. VANYUR, ASSISTANT DIRECTOR  
CORRECTIONAL PROGRAMS DIVISION

FROM:

*Harley G. Lappin*  
Harley G. Lappin, Director

SUBJECT:

Establishment of a Certification Review Panel and  
Delegation of Certification Authority

By this memorandum, I am directing the establishment of a Certification Review Panel (CRP) to review releasing offenders for civil commitment pursuant to Title 18 U.S.C. § 4248(a), as enacted by the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). This panel is to be composed of staff from the Correctional Programs Division, the Office of General Counsel, and others appointed by the Assistant Director, Correctional Programs Division.

Further, I am delegating authority to certify offenders as "sexually dangerous persons" as defined under this law, to the Chairperson of the CRP. On an interim basis, this authority is delegated to Dr. William T. Bickart, Interim CRP Chair, and Dr. Paul Sahwell, Dr. Patti Butterfield or Dr. John Baxter as alternate Chairpersons in his absence. As a permanent CRP is staffed, this delegated authority will convey to the Chairperson of the CRP.